

ASSEMBLY BILL

No. 885

Introduced by Assembly Member Keene

February 18, 2005

An act to amend Sections 1788.2, 2924f, and 2924g of the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 885, as introduced, Keene. Mortgages: sale of property.

(1) The Rosenthal Fair Debt Collection Practices Act regulates debt collectors and debt collection practices, both as defined. Under the act, the definition of "debt collector" does not include an attorney or counselor at law.

This bill additionally would exclude from the definition of "debt collector," for purposes of these provisions, a trustee or substituted trustee under a deed of trust or mortgage, their agents, or any person or entity performing those acts in specified provisions relating to default and foreclosure under a deed of trust or mortgage.

(2) Existing law requires, except as specified, that notice be given before any sale of property can be made under the power of sale contained in any deed of trust or mortgage, or any resale resulting from a rescission for a failure of consideration, by posting a specified written notice in one public place in the city or judicial district where the property is to be sold, and by publishing a copy in a newspaper of general circulation published in the city, judicial district, or county in which the property is situated, or a contiguous county, as specified.

This bill would provide, instead, that the written notice shall be posted in one public place in the county where the property is to be sold, and published in a newspaper of general circulation that is published in the county in which the property is situated.

(3) Existing law provides that all sales of property under the power of sale contained in any deed of trust or mortgage shall commence at the time and location specified in the notice of sale, and requires any postponement to be announced at that time and location or at any time prior to the completion of the sale at the discretion of the trustee or upon instruction by the beneficiary to the trustee that the sale proceedings be postponed. Existing law permits a maximum of 3 postponements of the sale proceedings, and requires a new notice of sale to be given before any further sale proceedings may be scheduled. Existing law also requires the trustee to postpone the sale upon the order of any court of competent jurisdiction, or where stayed by operation of law, or by the mutual agreement of any trustor and any beneficiary or any mortgagor and any mortgagee, however any such postponement does not count in determining the maximum number of postponements permitted without giving a new notice of sale.

This bill, instead, would permit any number of postponements of the sale proceedings at any time prior to the completion of the sale, for any period of time not to exceed a total of 180 days from the date set forth in the notice of sale, upon the order of any court of competent jurisdiction, where stayed by operation of law, by mutual agreement of any trustor and any beneficiary or any mortgagor and any mortgagee, at the discretion of the trustee, or upon instruction by the beneficiary to the trustee that the sale proceedings be postponed. Any postponements beyond the 180-day period would require a new notice of sale to be given before any further sale proceedings may be scheduled.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1788.2 of the Civil Code is amended to
- 2 read:
- 3 1788.2. (a) Definitions and rules of construction set forth in
- 4 this section are applicable for the purpose of this title.
- 5 (b) The term “debt collection” means any act or practice in
- 6 connection with the collection of consumer debts.
- 7 (c) The term “debt collector” means any person who, in the
- 8 ordinary course of business, regularly, on behalf of himself or
- 9 herself or others, engages in debt collection. The term includes

1 any person who composes and sells, or offers to compose and
2 sell, forms, letters, and other collection media used or intended to
3 be used for debt collection, but does not include an attorney or
4 counselor at law, *or a trustee or substituted trustee under a deed*
5 *of trust or mortgage, their agents, or any person or entity*
6 *performing those acts specified in Article 1 (commencing with*
7 *Section 2920) of Chapter 2 of Title 14.*

8 (d) The term “debt” means money, property or their equivalent
9 which is due or owing or alleged to be due or owing from a
10 natural person to another person.

11 (e) The term “consumer credit transaction” means a
12 transaction between a natural person and another person in which
13 property, services or money is acquired on credit by that natural
14 person from such other person primarily for personal, family, or
15 household purposes.

16 (f) The terms “consumer debt” and “consumer credit” mean
17 money, property or their equivalent, due or owing or alleged to
18 be due or owing from a natural person by reason of a consumer
19 credit transaction.

20 (g) The term “person” means a natural person, partnership,
21 corporation, limited liability company, trust, estate, cooperative,
22 association or other similar entity.

23 (h) The term “debtor” means a natural person from whom a
24 debt collector seeks to collect a consumer debt which is due and
25 owing or alleged to be due and owing from such person.

26 (i) The term “creditor” means a person who extends consumer
27 credit to a debtor.

28 (j) The term “consumer credit report” means any written, oral
29 or other communication of any information by a consumer
30 reporting agency bearing on a consumer’s creditworthiness,
31 credit standing, credit capacity, character, general reputation,
32 personal characteristics or mode of living which is used or
33 expected to be used or collected in whole or in part for the
34 purpose of serving as a factor in establishing the consumer’s
35 eligibility for (1) credit or insurance to be used primarily for
36 person, family, or household purposes, or (2) employment
37 purposes, or (3) other purposes authorized under any applicable
38 federal or state law or regulation. The term does not include (a)
39 any report containing information solely as to transactions or
40 experiences between the consumer and the person making the

1 report; (b) any authorization or approval of a specific extension
2 of credit directly or indirectly by the issuer of a credit card or
3 similar device; or (c) any report in which a person who has been
4 requested by a third party to make a specific extension of credit
5 directly or indirectly to a consumer conveys his or her decision
6 with respect to that request, if the third party advises the
7 consumer of the name and address of the person to whom the
8 request was made and such person makes the disclosures to the
9 consumer required under any applicable federal or state law or
10 regulation.

11 (k) The term “consumer reporting agency” means any person
12 which, for monetary fees, dues, or on a cooperative nonprofit
13 basis, regularly engages, in whole or in part, in the practice of
14 assembling or evaluating consumer credit information or other
15 information on consumers for the purpose of furnishing
16 consumer credit reports to third parties, and which uses any
17 means or facility for the purpose of preparing or furnishing
18 consumer credit reports.

19 SEC. 2. Section 2924f of the Civil Code is amended to read:

20 2924f. (a) As used in this section and Sections 2924g and
21 2924h, “property” means real property or a leasehold estate
22 therein, and “calendar week” means Monday through Saturday,
23 inclusive.

24 (b) (1) Except as provided in subdivision (c), before any sale
25 of property can be made under the power of sale contained in any
26 deed of trust or mortgage, or any resale resulting from a
27 rescission for a failure of consideration pursuant to subdivision
28 (c) of Section 2924h, notice of the sale thereof shall be given by
29 posting a written notice of the time of sale and of the street
30 address and the specific place at the street address where the sale
31 will be held, and describing the property to be sold, at least 20
32 days before the date of sale in one public place in the ~~city~~ *county*
33 where the property is to be sold, ~~if the property is to be sold in a~~
34 ~~city, or, if not, then in one public place in the judicial district in~~
35 ~~which the property is to be sold,~~ and publishing a copy once a
36 week for three consecutive calendar weeks, the first publication
37 to be at least 20 days before the date of sale, in a newspaper of
38 general circulation published in the ~~city in which the property or~~
39 ~~some part thereof is situated, if any part thereof is situated in a~~
40 ~~city, if not, then in a newspaper of general circulation published~~

1 in the judicial district in which the property or some part thereof
2 is situated, or in case no newspaper of general circulation is
3 published in the city or judicial district, as the case may be, in a
4 newspaper of general circulation published in the county in
5 which the property or some part thereof is situated, or in case no
6 newspaper of general circulation is published in the city or
7 judicial district or county, as the case may be, in a newspaper of
8 general circulation published in the county in this state that (A) is
9 contiguous to the county in which the property or some part
10 thereof is situated and (B) has, by comparison with all similarly
11 contiguous counties, the highest population based upon total
12 county population as determined by the most recent federal
13 decennial census published by the Bureau of the Census. A copy
14 of the notice of sale shall also be posted in a conspicuous place
15 on the property to be sold at least 20 days before the date of sale,
16 where possible and where not restricted for any reason. If the
17 property is a single-family residence the posting shall be on a
18 door of the residence, but, if not possible or restricted, then the
19 notice shall be posted in a conspicuous place on the property;
20 however, if access is denied because a common entrance to the
21 property is restricted by a guard gate or similar impediment, the
22 property may be posted at that guard gate or similar impediment
23 to any development community. Additionally, the notice of sale
24 shall conform to the minimum requirements of Section 6043 of
25 the Government Code and be recorded with the county recorder
26 of the county in which the property or some part thereof is
27 situated at least 14 days prior to the date of sale. The notice of
28 sale shall contain the name, street address in this state, which
29 may reflect an agent of the trustee, and either a toll-free
30 telephone number or telephone number in this state of the trustee,
31 and the name of the original trustor, and also shall contain the
32 statement required by paragraph (3) of subdivision (c). In
33 addition to any other description of the property, the notice shall
34 describe the property by giving its street address, if any, or other
35 common designation, if any, and a county assessor's parcel
36 number; but if the property has no street address or other
37 common designation, the notice shall contain a legal description
38 of the property, the name and address of the beneficiary at whose
39 request the sale is to be conducted, and a statement that
40 directions may be obtained pursuant to a written request

1 submitted to the beneficiary within 10 days from the first
2 publication of the notice. Directions shall be deemed reasonably
3 sufficient to locate the property if information as to the location
4 of the property is given by reference to the direction and
5 approximate distance from the nearest crossroads, frontage road,
6 or access road. If a legal description or a county assessor's parcel
7 number and either a street address or another common
8 designation of the property is given, the validity of the notice and
9 the validity of the sale shall not be affected by the fact that the
10 street address, other common designation, name and address of
11 the beneficiary, or the directions obtained therefrom are
12 erroneous or that the street address, other common designation,
13 name and address of the beneficiary, or directions obtained
14 therefrom are omitted. The term "newspaper of general
15 circulation," as used in this section, has the same meaning as
16 defined in Article 1 (commencing with Section 6000) of Chapter
17 1 of Division 7 of Title 1 of the Government Code.

18 The notice of sale shall contain a statement of the total amount
19 of the unpaid balance of the obligation secured by the property to
20 be sold and reasonably estimated costs, expenses, advances at the
21 time of the initial publication of the notice of sale, and, if
22 republished pursuant to a cancellation of a cash equivalent
23 pursuant to subdivision (d) of Section 2924h, a reference of that
24 fact; provided, that the trustee shall incur no liability for any
25 good faith error in stating the proper amount, including any
26 amount provided in good faith by or on behalf of the beneficiary.
27 An inaccurate statement of this amount shall not affect the
28 validity of any sale to a bona fide purchaser for value, nor shall
29 the failure to post the notice of sale on a door as provided by this
30 subdivision affect the validity of any sale to a bona fide
31 purchaser for value.

32 (2) If the sale of the property is to be a unified sale as provided
33 in subparagraph (B) of paragraph (1) of subdivision (a) of
34 Section 9604 of the Commercial Code, the notice of sale shall
35 also contain a description of the personal property or fixtures to
36 be sold. In the case where it is contemplated that all of the
37 personal property or fixtures are to be sold, the description in the
38 notice of the personal property or fixtures shall be sufficient if it
39 is the same as the description of the personal property or fixtures
40 contained in the agreement creating the security interest in or

encumbrance on the personal property or fixtures or the filed financing statement relating to the personal property or fixtures. In all other cases, the description in the notice shall be sufficient if it would be a sufficient description of the personal property or fixtures under Section 9108 of the Commercial Code. Inclusion of a reference to or a description of personal property or fixtures in a notice of sale hereunder shall not constitute an election by the secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, shall not obligate the secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, and in no way shall render defective or noncomplying either that notice or a sale pursuant to that notice by reason of the fact that the sale includes none or less than all of the personal property or fixtures referred to or described in the notice. This paragraph shall not otherwise affect the obligations or duties of a secured party under the Commercial Code.

(c) (1) This subdivision applies only to deeds of trust or mortgages which contain a power of sale and which are secured by real property containing a single-family, owner-occupied residence, where the obligation secured by the deed of trust or mortgage is contained in a contract for goods or services subject to the provisions of the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3).

(2) Except as otherwise expressly set forth in this subdivision, all other provisions of law relating to the exercise of a power of sale shall govern the exercise of a power of sale contained in a deed of trust or mortgage described in paragraph (1).

(3) If any default of the obligation secured by a deed of trust or mortgage described in paragraph (1) has not been cured within 30 days after the recordation of the notice of default, the trustee or mortgagee shall mail to the trustor or mortgagor, at his or her last known address, a copy of the following statement:

YOU ARE IN DEFAULT UNDER A

_____.

(Deed of trust or mortgage)

DATED _____. UNLESS YOU TAKE ACTION TO PROTECT
YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF

1 YOU NEED AN EXPLANATION OF THE NATURE OF THE
2 PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A
3 LAWYER.

4
5 (4) All sales of real property pursuant to a power of sale
6 contained in any deed of trust or mortgage described in
7 paragraph (1) shall be held in the county where the residence is
8 located and shall be made to the person making the highest offer.
9 The trustee may receive offers during the 10-day period
10 immediately prior to the date of sale and if any offer is accepted
11 in writing by both the trustor or mortgagor and the beneficiary or
12 mortgagee prior to the time set for sale, the sale shall be
13 postponed to a date certain and prior to which the property may
14 be conveyed by the trustor to the person making the offer
15 according to its terms. The offer is revocable until accepted. The
16 performance of the offer, following acceptance, according to its
17 terms, by a conveyance of the property to the offeror, shall
18 operate to terminate any further proceeding under the notice of
19 sale and it shall be deemed revoked.

20 (5) In addition to the trustee fee pursuant to Section 2924c, the
21 trustee or mortgagee pursuant to a deed of trust or mortgage
22 subject to this subdivision shall be entitled to charge an
23 additional fee of fifty dollars (\$50).

24 (6) This subdivision applies only to property on which notices
25 of default were filed on or after the effective date of this
26 subdivision.

27 SEC. 3. Section 2924g of the Civil Code is amended to read:

28 2924g. (a) All sales of property under the power of sale
29 contained in any deed of trust or mortgage shall be held in the
30 county where the property or some part thereof is situated, and
31 shall be made at auction, to the highest bidder, between the hours
32 of 9 a.m. and 5 p.m. on any business day, Monday through
33 Friday.

34 The sale shall commence at the time and location specified in
35 the notice of sale. Any postponement shall be announced at the
36 time and location specified in the notice of sale for
37 commencement of the sale or pursuant to paragraph (1) of
38 subdivision (c).

39 If the sale of more than one parcel of real property has been
40 scheduled for the same time and location by the same trustee, (1)

any postponement of any of the sales shall be announced at the time published in the notice of sale, (2) the first sale shall commence at the time published in the notice of sale or immediately after the announcement of any postponement, and (3) each subsequent sale shall take place as soon as possible after the preceding sale has been completed.

(b) When the property consists of several known lots or parcels they shall be sold separately unless the deed of trust or mortgage provides otherwise. When a portion of the property is claimed by a third person, who requires it to be sold separately, the portion subject to the claim may be thus sold. The trustor, if present at the sale, may also, unless the deed of trust or mortgage otherwise provides, direct the order in which property shall be sold, when the property consists of several known lots or parcels which may be sold to advantage separately, and the trustee shall follow that direction. After sufficient property has been sold to satisfy the indebtedness no more can be sold.

If the property under power of sale is in two or more counties the public auction sale of all of the property under the power of sale may take place in any one of the counties where the property or a portion thereof is located.

(c) (1) There may be a postponement *or postponements* of the sale proceedings at any time prior to the completion of the sale ~~at for any period of time not to exceed a total of 180 days from the date set forth in the notice of sale. The trustee shall postpone the sale in accordance with any of the following:~~

(A) Upon the order of any court of competent jurisdiction.

(B) If stayed by operation of law.

(C) By mutual agreement, whether oral or in writing, of any trustor and any beneficiary or any mortgagor and any mortgagee.

(D) At the discretion of the trustee, ~~or upon.~~

(E) Upon instruction by the beneficiary to the trustee that the sale proceedings be postponed.

~~There may be a maximum of three postponements of the sale proceedings pursuant to this subdivision. In the event that the sale proceedings are postponed more than three times, the scheduling of any further sale proceedings shall be preceded by the giving of a new notice of sale in the manner prescribed by Section 2924f.~~

~~(2) The trustee shall postpone the sale upon the order of any court of competent jurisdiction, or where stayed by operation of law, or by the mutual agreement, whether oral or in writing, of any trustor and any beneficiary or any mortgagor and any mortgagee. Any postponement pursuant to this paragraph shall not be a postponement for purposes of determining the maximum number of postponements permitted pursuant to this subdivision nor shall a postponement resulting from the prohibition upon a sale within seven days from the expiration of an injunction, restraining order, or stay as provided in subdivision (d) be deemed a postponement for purposes of this subdivision. In addition, one postponement by the trustee based upon a reasonable belief that a petition for bankruptcy has been filed shall not be a postponement for purposes of determining the maximum number of postponements permitted pursuant to this subdivision.~~

(2) In the event that the sale proceedings are postponed for a period or periods totaling more than 180 days, the scheduling of any further sale proceedings shall be preceded by giving a new notice of sale in the manner prescribed in Section 2924f. Fees incurred for the new notice of sale shall not exceed the amounts specified in Sections 2924c and 2924d.

(d) The notice of each postponement and the reason therefor shall be given by public declaration by the trustee at the time and place last appointed for sale. A public declaration of postponement shall also set forth the new date, time, and place of sale and the place of sale shall be the same place as originally fixed by the trustee for the sale. No other notice of postponement need be given. However, the sale shall be conducted no sooner than on the seventh day after the earlier of (1) dismissal of the action or (2) expiration or termination of the injunction, restraining order, or stay ~~(which~~ that required postponement of the ~~sale)~~ sale, whether by entry of an order by a court of competent jurisdiction, operation of law, or otherwise, unless the injunction, restraining order, or subsequent order expressly directs the conduct of the sale within that seven-day period. For purposes of this subdivision, the seven-day period shall not include the day on which the action is dismissed, or the day on which the injunction, restraining order, or stay expires or is terminated. If the sale had been scheduled to occur, but this

1 subdivision precludes its conduct during that seven-day period, a
2 new notice of postponement shall be given if the sale had been
3 scheduled to occur during that seven-day period. The trustee
4 shall maintain records of each postponement and the reason
5 therefor.

6 (e) Notwithstanding the time periods established under
7 subdivision (d), if postponement of a sale is based on a stay
8 imposed by Title 11 of the United States Code (bankruptcy), the
9 sale shall be conducted no sooner than the expiration of the stay
10 imposed by that title and the seven-day provision of subdivision
11 (d) shall not apply.

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